Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MALCOLM FRANK COLE

Appeal No. 2002-1549
Application No. 09/315,101

HEARD: December 11, 2002

Before ABRAMS, FRANKFORT, and BAHR, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-9, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to an adjustable table leg. An understanding of the invention can be derived from a reading of exemplary claim 1, which has been reproduced below.

The single prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Grover	3,988,021	Oct. 26, 1976

Claims 1-5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Grover.

Claims 6-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Grover.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 16) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 15) and Reply Brief (Paper No. 18) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The Rejection Under Section 102

Claims 1-5 stand rejected as being anticipated by Grover. Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, In re Paulsen, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). For the reasons explained below, it is our conclusion that the subject matter recited in claims 1-5 is not anticipated by Grover, and therefore we will not sustain this rejection.

As explained in the specification, the appellant's invention provides table legs that are independently adjustable so as to allow the table to be leveled when placed upon an uneven surface. The adjustment of each leg is accomplished by pivotally attaching it to the table top, and providing an adjustment means that is pivotally attached to the table top on the one hand and to the leg on the other hand and which, when adjusted, varies the angle between the table top and the leg and thus varies the effective length of the leg so that compensation can be made for uneven surfaces.

Independent claim 1 sets forth the invention in the following manner:

1. A table mountable on an uneven surface, said table comprising:

(I) a table top;

(ii) at least one adjustable leg, said leg having one end pivotally attached to said table top and a second end resting on said uneven surface;

(iii) an adjuster for independently adjusting each adjustable leg, said adjuster being pivotally attached to said table top and said adjustable leg; wherein

(iv) said adjuster can be varied to adjust the angle between said adjustable leg and said table top thereby varying the height and angle of said table top such that said table can be leveled on said uneven surface.

Grover is directed to a support structure for a game table, such as a pool table, which (1) allows the table top to be folded to a storage position and (2) to be leveled in a playing position “to accommodate irregularities in the floor upon which the table is supported” (column 2, lines 9-13; Figure 2). On page 3 of the Answer, the examiner states that each of Grover’s “leg assemblies 16” comprises an adjustable leg and an adjuster in accordance with the requirements of claim 1. We do not agree.

Each of the leg assemblies 16 comprises a “leg 36" (column 2, line 66; Figure 6), a cross support member 18 secured to the underside of the table top and pivotally attached to the leg 36 by means of a hinge 22 and a link 30, a caster support 40, and a second hinge 38 which attaches leg 36 to caster support 40 (Figures 5 and 6). The table top is stabilized and leveled in the playing position by four braces 70, each of

which is attached at their upper ends to the underside of the table top cross support members 18 and at its upper end to the under side of a table top cross support member 18 and at its lower end to a caster support 40, with each brace being adjustable in length by means of a turnbuckle 72 (Figure 2). The caster supports 40 at opposite ends of the table are connected together by members 52 and 54, which can be adjusted in length by ratchet mechanisms 55 (Figure 5).

As we understand the examiner's position, it is that each of the braces 70 constitutes an "adjuster" that can "independently adjust" a leg, "since the struts 72, 72 on the left side [as viewed in Figure 2] can be shortened or lengthened which independently varies the height of the left side compared to the right side by varying the angle between the adjustable leg (16) and the table top" (Answer, page 6).

Claim 1 recites "an adjuster for independently adjusting each adjustable leg, said adjuster being pivotally attached to said table top and said adjustable leg . . . [which] adjust[s] the angle between said adjustable leg and said table top; wherein said adjuster can be varied to adjust the angle between said adjustable leg and said table top" (emphasis added). Considering the language used in the claim on its face as it would be understood by one of ordinary skill in the art and in view of the description provided in the specification and the arguments set forth in the Briefs, we interpret this recitation to mean that each leg can be adjusted by the action of a single adjuster, without affecting the adjustment of the other legs. This being the case, as the appellant

has argued, the claim language does not read on the Grover structure for the following two reasons. First, even giving the examiner's position its most charitable interpretation, neither of the legs of the Grover table can be adjusted by altering the length of a single adjuster 70 because, to assemble the table in its operating position, all four adjusters must be tightened (Figures 1 and 2), and the position of all four must be altered (two loosened and two tightened) in order to change the angle between either leg and the table top. Thus, the operation of "an adjuster" cannot adjust the angle of "each" leg, as is required by claim 1. Second, the adjustment of the four Grover adjusters necessarily results in the angle between both of the legs and the table top simultaneously being changed, so that each leg is not "independently" adjustable, also as required by claim 1.

The Rejection Under Section 103

Dependent claims 6-9 stand rejected as being obvious in view of Grover. The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation

must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

We have pointed out above in evaluating the rejection of claim 1, from which claims 6-9 depend, the reasons why the language of claim 1 does not read on the Grover structure. Our opinion is not altered by considering Grover in the light of 35 U.S.C. § 103, for we fail to perceive any teaching, suggestion or incentive which would have led one of ordinary skill in the art to modify the Grover table in such a manner as to meet the terms of claim 1. It therefore follows that Grover does not establish a prima facie case of obviousness with respect to the subject matter recited in claims 6-9, all of which depend from claim 1, and we will not sustain this rejection.

CONCLUSION

Neither rejection is sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS Administrative Patent Judge	)
CHARLES E. FRANKFORT Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND) INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)

NEA/lbg

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